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Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No.----------

IN THE

SUPREME COURT OF THE UNITED STATES

Ivan-James:Patry—PETITIONER

vs.

TOWN OF GRAND ISLE---RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI
TO
THE SUPREME COURT OF THE STATE OF
VERMONT

PETITION FOR WRIT OF CERTIORARI

Ivan-James: Patry
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QUESTION PRESENTED

1. Did the right to settle, cultivate, improve, i.e. inhabit, vest in the grantee at the time of the granting of the Charter of the Two Heroes of 1779, without further grant?

2. Does the grantee have the right to perform the conditions and obligations of said Grant and Contract, without further grant?

3. Is this Contract impaired by the two Lower Court decisions and orders, (App A and B)?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

Also, the State of Vermont, Grantor, may be a party, see Page 2, Jurisdiction

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the highest state court to review the merits appears at Appendix A and C to the petition and has been designated for publication but is not yet reported.

The opinion of the Vermont Environmental court appears at Appendix B to the petition and has been designated for publication but is not yet reported.

JURISDICTION

This is a case from the State of Vermont Supreme Court:

The date on which the highest state court decided my case was March 9, 2004.
A copy of that decision appears at Appendix A

A timely petition for rehearing was thereafter denied on the following date: April 14, 2004, and a copy of the order denying rehearing appears at Appendix C

The jurisdiction of This Court is invoked under 28 U.S.C. 1257(a).

Also, 28 USC 2403(b) may apply, as the constitutionality of a statute of a State is drawn
Into question, (although it is not one of my Questions Presented)

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article I, Section 10 of the United States Constitution, the relevant part of which is :"No state shall... pass any...law impairing the obligation of contracts..." (App D)

The so-called zoning-enabling Act of Vermont, Act 334, of which Section 4490 states that "The provisions of this chapter shall not affect any act done, contract executed... prior to March 23, 1968..."(App E).

STATEMENT OF THE CASE

In 1779 the State of Vermont made, by Legislative Act, a Grant of land called The Charter of the Two Heroes, of which I am Proven and undisputed Assign of my particular half-acre portion in the Town of Grand Isle, and which complete certified Proof of 54 certified deeds is now, and has been included timely, in the Record of this case. This continuing and valid contract expressly requires, of the grantees heirs and assigns, conditions and obligations of planting, cultivating, settling and improving on Penalty of Forfeiture for not so improving or settling.
In May of 2002 I bought said half acre and began to so improve, cultivate and settle. On June 9, 2002, I was served Notice of a hearing before the Vermont environmental court on June 12, 2002, at which hearing Said Town asked that court to order me to stop using my land and to order me to apply for new contracts, called permits, before further use of my land. At that hearing, before the First court, in writing and orally, I stated:

- that a grant of land is a contract, (Fletcher v Peck)
- that I am Proven Assign of my particular continuing contract
- that my Grant is a prior contract, with the State of Vermont, prior to the 1968 zoning statutes
- that the expressed intention of the Grantor was "settling, cultivating and improving"
- that the intent of the 1968 Vermont legislature could not have been to conflict with or overturn ,i.e. impair its previous Act of 1779, that I know the 1968 legislature would not have violated the prior contract they had with me

- that the zoning law is being mis-applied to prevent and hinder, i.e. impair, my granted rights and uses
- that if the State and/or Town has the power to break my contract, then I want to be paid in money, as Noticed in my posted daily use fee
- that I wanted that First court and Town to follow the intent of the 1968 legislature and the 1779 legislature
- that I am required to settle and improve; that I have the right and obligation to settle and improve
- that the Contract still stands, and the zoning laws cannot conflict with said contract unless Town wants to expropriate and pay, i.e. pay to impair; but I am not voluntarily giving away my rights
- that the Treaty of Peace of 1783, as integral part of my Title and Contract, does confirm and up hold my title and its obligations and conditions
- that the expressly-stated law of the instrument are the statutes of the time, the Common Law of England, and the Constitution of Vermont of 1777, under which the taking of property and the rights in property are to be compensated for

On June 14, 2002, that first court decided (App. B) that I did not have a continuing contract: "However that land grant did not create a continuing contract over the intervening two centuries between the grantee and the grantor", attempted to imply a forfeiture, and stated that governmental regulation based in the police power does not violate the constitutional protection against governmental taking of private property without compensation unless the regulation is so stringent that it leaves the landowner without a reasonable use of the property"; and ordered me to take my trailer off my land and to stop using and improving my land and ordered me to apply for new

contracts, i.e. permits, to do that which I am already obligated to do, and granted the right to do.
All of which I objected to in my Response of Sept. 26 and Oct. 14, 2002, at which time I also quoted at length from Trustees of Dartmouth College v Woodward, 4 Wheat 656, and other U.S. Supreme Court and Vermont Supreme Court cases, about grants of land, contracts, impairment, obligations, intention of grantor, valuable consideration as property, the odiousness of presumption of forfeiture; and I also provided that first court with a copy of Section 4490 of Act 334, the so-called zoning-enabling act, which is now codified at 24 VSA ,Chapter 117, (App. E), which said Section states, in relevant part, "The provisions of this chapter shall not affect any act done, contract executed or liability incurred prior to March 23, 1968..."
And I also stated that nothing I had said or done was with an intent to waive any of my rights.
On Oct. 14, 2002, that first court ruled that I had presented no additional arguments, that it was denying my request for reconsideration, and directed entry of final judgment as to the issues addressed in the June 14, 2002, Preliminary Injunction Order, and that I may appeal to the Vermont Supreme Court as if the order had been issued today.
I then timely gave Notice of Appeal to the Vermont Supreme Court, filed timely Docketing Statement, Timely requested Hearing before the Full Court, timely filed my brief and reply brief, in which I again repeated all my claims and showed said second Court where I had made those claims in first court, and filed entire Record with complete Proof of Contract. At the Second Court Oral Hearing, Nov. 19, 2002, I stated, among other things, that Police Powers could affect me, but in this 1779 grant of land contract matter, I want to be paid to be affected; also, that my land is not exempt from zoning, it is in conformity

with zoning, as provided by said Section 4490, itself part of the zoning law.

The Decision and Order of the second Court affirmed the first court decision and remanded; and also stated that it found, in the Shall be Entitled to all Privileges and Immunities section, and the *habendum*, of said Grant, no right of inhabitation exempting grantee or heirs from zoning laws, citing Vermont Supreme Court decision requiring ex press condition in grant in order to be exempt from taxation, (Herrick v Randolph, 13 VT 525 in 1841, which relies on US Supreme Court decisions of Trustees of Dartmouth College v Woodward and NJ v Wilson App. E). Second Court also stated that neither the Treaty of Peace of 1783 nor said Section 4490 could preserve rights never granted in the Charter; and, that the Charter is not immunized from later-enacted police powers.

I timely asked Second court to Reconsider, pointing out what it had overlooked and misapprehended: the obligations clearly stated, the right to perform those obligations, the right of a contract not to have its rights re-asserted or impaired by the grantor, the now-impaired clearly-stated intention of the 1968 Legislature, the now-impaired clearly-stated intention of the 1779 Legislature, as well as upholding the first court's order which orders me not to perform my obligations, orders me to receive a new contract, and orders my successors and assigns to follow this order. And all of which non-performance puts me at risk of forfeiture, by the terms of the Grant itself and by the Forfeiture Act now in effect, 12VSA 4981-4996, and which Act does relate to grants by both the State and to Royal Grants.

The second Court denied Rehearing on April 14, 2002, and I am timely appealing to This Court to reverse these erroneous decisions.

I also found a rule which states that I must notify the second court in writing of the existence of the question of the constitutionality of any act of the legislature in a proceeding to which the state is not a party, which I did on March 31, 2004; until then I had believed that Act 334 was constitutional, with section 4490 protecting from impairment all contracts and Acts prior to March 23, 1968. I still believe that Act 334 is constitutionally-written, but that it is not being carried out, in my particular case, constitutionally.

REASONS FORGRANTING THE PETITION

1. There is a substantial Federal question involved, (see p.*i*, Questions Presented, and p. 3, Constitutional and Statutory Provisions Involved): Although Article I, Section 10 prohibits states from passing laws impairing contracts, and although I have proved that I have a valid and continuing contract, and although no evidence has been brought forth to prove that the contract is not valid or continuing, Second Court affirms First Court decision which states: "However, that land grant did not create a continuing contract over the intervening two centuries between the grantee and the grantor. Rather, if the grantee fulfilled all the prerequisites of the grant, the grantee obtained ownership in fee simple." And upon which conclusion First Court ordered me to do all those things that I am complaining about: to stop performing my original and existing contract, and to apply for and receive a new contract. And, Second Court concludes that Said Grant of land is not a protected contract by concluding that Rights never granted in the Charter are not preserved, i.e., not affected or impaired.

Yet This Court has decided the criteria for a protected contract, Dartmouth at 643-644, 699, 700, see App. G, note 1. And, this is a contract for the use and dominion of property, expressly stated; it is made on valuable consideration, expressly stated; it is expressly assignable; it has expressly-named original parties whose minds have met and agreed, expressly; it does convey vested rights; it has express obligations. It is clearly not a contract of mere naked powers. The obligations of settling, cultivating and improving, among other rights, are the subjects of this contract and grant. This settling, cultivating and improving are rights vested in me as assigned grantee in aid of which right I must have the power to exercise, or it is no contract worthy of the name.

2. I did raise the Question from the beginning, see P. 4, Statement of the Case; as well, the record shows throughout from the First Court hearing on 6-12-02,Response and Transcript; 9-26-02 and 10-14-02 Response,;10-21-02 Notice of Appeal; 10-30-02 Docketing Statement;1-29-03 Appeal Brief; 3-12-03 Reply Brief; 11-19-03 Appeal Hearing Transcript , and 3-22-04 Reconsideration Request.

3. This is a final order, (see p 1, Opinions Below)

4. This is a State Court decision deciding a Federal Question of substance not in accordance with applicable decisions of This Court:

4.a. Trustees of Dartmouth College v Woodward, 4 Wheat. 518, which decision has not been overruled, and which decided, among other things, that an Act of a State Legislature which alters the Charter of Grantee without the consent of Grantee, is an act impairing the obligations of the contract and is therefore unconstitutional and void.

4.a. (1) Neither First nor Second Court properly and completely considered the Intention of the Grantor, which, if ambiguous, could be ascertained by the rest of the instrument, which I have repeatedly so requested: 6-12R: 2; 10-21NA: 3,5,6,7; 1-29AppBr:1,10,11,13,15,16,17; 11-19Tr: 2,3,5,9,16; 3-22Rec:2; and which I have also stated is clearly-stated in Said Grant on the very first page (App F):

" In order for settling and cultivating the same and thereon making a new plantation, we have therefore thought fit for the due encouragement of their laudable designs and for other valuable consideration us hereunto moving...give and grant..." And which intention is further clearly expressed, and cannot be said to be ambiguous, in the Forfeiture clause of the Grant, (App F.):

"...that each Proprietor in the said Two Heroes, his heirs , or assigns, shall Plant and cultivate two acres of land...on penalty of the forfeiture of each respective Right or Share

of land in said Island not so improved or settled...", clearly expressing the grantor's intent that settling and improving shall be done, or the grantee shall not be granted the land.

And, also in the *habendum*: "To have and to hold ...unto them and their heirs and assigns forever..."See FOOTNOTE #1.

But instead Second Court relies solely on the Enfranchised and Entitled to All the Privileges And Immunities section and the *habendum*, of the Grant (App F) and there finds no right to inhabit with an express exemption from, in effect, impairment without compensation by later-enacted legislation and police powers. And thereby so finding no right of inhabitation at all; as it must be that a Right which requires an 'exception' is no Right at all; as it is forever vulnerable to redefinition, alteration and outright removal and disappearance—a not very subtle erosion of rights.

However, Dartmouth at 639 and 641 and 658 clearly anticipate an inspection of the entire instrument in order to understand the purpose and design and the objects of its creation, see App G, note 2.

And, in so inspecting, it is reasonable to find a contract then deemed sacred by all, as Said Grant is a contract between, on the one part, a new government desirous of having its lands settled and productive and in the hands of Vermonters and not Yorkers or Indians, and, on the other part, the grantees desirous of performing the arduous tasks involved yet with the clear reward of complete dominion and use forever, Dartmouth at 643 and 700, see App G, note 3.

It is also reasonable, in so inspecting, to find, as found in Dartmouth, in the instrument, that the government has conferred the capacity to execute the designs which the government agrees, by so granting, is a beneficent object; rather than to imply a power yet retained by the grantor,

which is in direct contradiction to the grant's express conditions, Dartmouth at 637-638, see App G, note 4.

As well, a complete inspection of the instrument shows the express intention of the grantor that the law of the instrument be "by the laws and constitution of this State...", which I have repeatedly pointed out to both courts and asked them to so use, 6-12R: 4, 9-26R: 5; 10-21 NA: 5,10-30DS: 5,7;1-29ApBr:11; 3-12RBr:8,13; and which laws include the common law and its most and well-settled doctrines, especially for examining this 1779 contract, see App G, note 10.

4.a. (2) Second Court has not only decided that said grant is not a contract not to be impaired, but has created a new standard for deciding whether a Grant of land is not a contract not to be impaired, i.e., is a contract which may be impaired, by accepting and agreeing with the argument that the expressly-worded obligations to be performed, Settling and Cultivating and Improving, which are the very vested rights of Settling and Cultivating and Improving, need some further and explicit exemption from impairment of those rights and obligations by later-enacted legislation and police powers/land regulation, in order for this contract's vested rights and obligations to qualify as rights and obligations with the protected right not to be impaired, the protected right not to have the purposes to which the property is to be applied be varied or changed, Dartmouth at 637, see App G, note 5.

However, in creating this new standard, said Second Court establishes that all government contracts can now be made worth less and worthless, i.e., impairable without compensation, whenever the government claims, and the courts decide, that, in government-granted contracts, the government impliedly retains the right to impair without compensation unless said government-granted contract

contains an express exemption from impairment by later-enacted legislation and police powers. And yet this new standard has only just been invented and was not the standard for contracts written, as in this case, over 200 years ago. Dartmouth at 646,see App G, note 6; also note 3. See page 24, Importance to Others Similarly Situated.

Also, Dartmouth, at 627-630, clearly states that it is the civil institutions, and the instruments of government created for its purposes, and public objects, and a grant of political power, upon which the legislature may act according to its own judgment, unrestrained by any limitation of its power imposed by the constitution of the United States; but not if it be private, with objects unconnected with government. And, Dartmouth at 695 states that titles to land, contracts of civil institution, when acquired *bona fide*, are beyond the reach of legislative revocation.

But no case has been made, no evidence introduced, to show that my mere ordinary settling and improving and inhabiting is a civil institution, a government purpose or public object. Second Court decision, (App A), does clearly indicate that it is a public matter upon which it decides: "the public health, safety against fire, floods, explosions and other dangers". Yet there has been no evidence introduced to support any such claim of fire, flood, explosion or other dangers. And, there actually are limits to the use of such powers: they must not conflict with the provisions of the charter, and, they must be applied fairly, which must mean constitutionally, People v Plank Road, see App G, note 9.

4.a. (3) Second Court order, affirming First Court order (App B), prohibits performance of my existing contract, and orders me not to settle and not to improve, even though these are clearly and explicitly the essential obligations of

said contract; and to which prohibition I have repeatedly objected and refused to consent, but have instead repeatedly stated that if it is in the power of the Town and/or State to so impair and take so much of my valuable consideration that there is no value remaining to me, then I want to be compensated: 6-12R:3,4,5,6; 6-12TR:48,56-58;9-26R:1-8; 10-30DS:3,7; 1-29ApBr:1-29; 3-12RBr:2,4,5,10,11,13; 11-19TR:2, 3, 5, 8, 9, 10, 11, 15,16; 3-22Rec:1-4.

Yet Dartmouth at 658 and 688 says, in effect, that within a grant and contract is an implied contract to perform, as at 690, according to the terms and for the objects stipulated in the charter, see App G, note 7;and that changes to the essential terms of a grant, however unimportant or for the interest of the party objecting to the alteration, is an impairment of the obligations of a contract, Dartmouth at 651,652,662,665,682, (citing Fletcher v Peck), 684,710, 711, and 712, see App G, note 8.

4.a. (4) Second Court order affirms First Court order, which requires that I seek and accept a New Contract, (that which I have been repeatedly stating is an Inferior Contract to which I do not consent: 9-26R: 3,6,8; 10-21NA: 2, 10-30DS: 5; 1-29ApBr: 2,5,8,11,16,17; 3-12RBr:8); and that if I do not so seek and so "accept", I will be in contempt and at risk of more judicial proceedings and continue to have no settling and improving use of my land whatsoever. But a grantee cannot be compelled to receive a new charter unless the grantor has reserved a power for that purpose, most especially a new charter or contract, under which contract, I am on notice, by said First Court's order, App B, I may or may not be entitled to or qualified to, among other things, without the approval and consent of dozens of my neighbors (planning boards, review boards, zoning administrator, Selectboard), (Dartmouth at 710-711, see App G note 8), make even a reasonable use of my land,

Dartmouth at 675 and 707- 708, see App G, note 10. And, said First Court order, App B, agrees: "Town does not claim any property rights in this land..."As well, the only Reservation in my said Grant, App F, is that I am required to perform the clearly-expressed required settling and cultivation or forfeit the grant and contract to the State, the Grantor.

4.a (5) Said Orders create coerced conditions of non-performance of contract, about which I have objected since the beginning as hindering and impairing my prior contract, and which I further brought to Second Court's attention in my Request for Rehearing, 3-22Rec:1-4, along with a reference to the current Vermont Forfeiture Act,12VSA4981-4996, App E, in which grants which are grants or charters of lands lying in this state made by the King of Great Britain or by this state may be adjudged "forfeited for the non-performance of a condition annexed to or contained in such grant, whether expressed, or from the nature of the grant, clearly implied". And I also pointed out that, while I have been following, in good faith and as well as I could without waiving any of my granted rights, these said Orders, non-user and non-performance are being established and coerced, which is surely an improper use of an unreserved power by a Grantor, as well as not being a proper use of the judicial authority of the government, in this particular case, which Dartmouth, at 698, see Footnote #2, says is to ascertain the validity of the grant, enforce its proper uses and to suppress frauds, see App G, note 11. But the validity of the grant has been ascertained and proven by best evidence; nor has any evidence been brought forth to support a finding of invalidity; nor was there a claim of invalidity. The proper uses of the grant are those clearly expressed by the grant itself, and are settling, cultivating and improving. And there has been no claim of fraud, nor any evidence brought forth to support a finding of fraud.

4.a. (6) Said Orders, in effect, require that I waive the Constitutionally- protected obligations of contract, when I, coercedly, "accept", allegedly voluntarily, some allegedly-required new and inferior contract; and by so waiving thereby be the cause of my own injury and lack of constitutional protection. But I know that I can't be made to give up my rights, but rather must do so voluntarily. And I have repeatedly refused to so volunteer, throughout the Record.

4.a. (7) Said Orders overlooks the clearly- stated vested rights and obligations of my contract, i.e., the granted settling, cultivating and improving which I have described as inhabitation, and says they are merely impairable rights; that in order to be rights which are not to be impaired, they need to be so explicitly-expressed; otherwise they are perceived by that Second Court as "rights never granted in the charter", App A. Yet Dartmouth, at 699, says that rights are deemed valuable in law when they are the subject of a grant or contract, see App G, note 12.

4.b. The State of New Jersey v Wilson, 7 Cr 164, which is clearly the standard for Exemption from the sovereign power of Taxation, and which power a state gives up only upon such express wording in a grant. But there is no cite or reason for this standard to be extended to, and mis-applied to, the clearly-stated obligation to settle and improve in grants of land, contracts for the use and dominion of property.

4.c. Bedroc Limited v United States, 541 US -----(2004), in which This Court recently decided that the words of a grant be decided and understood in their ordinary meaning and the popular meaning at the time that it was enacted; and, that only ambiguous statutory text needs further "construction", see App G, note 14.

5. This is a State Court decision, deciding a Federal Question of substance, which is erroneous in other ways:

5.a. It conflicts with its own previous Vermont Supreme Court decisions, App G, note 13, which relied on Dartmouth:

5. a. (1)Franklin County Grammar School v Bailey, 62 Vt. 467, at 475, and which stated, among other things, that grants of land to the proprietors were absolute;

5. a. (2)The Trustees of the Caledonia County Grammar School v Burt, 11 Vt., 632, at 640, and which stated, among other things, that a grant to a man and his heirs forever is unconditional and absolute; and, at 641, that all the lands in Vermont, granted by charters from its Governor, under the authority of the legislature are held inviolable;

5. a (3)Herrick v Randolph, 13 Vt. 525, at 530, and which stated, among other things, that it is within the reasonable expectations of the grantees that the grant be interpreted to carry into full effect the object of the grantors, and, so as not to defeat or abridge those expectations;

5. a. (4)Galanes v Town of Brattleboro, 136 Vt. 235, cited in said Second Court's order, (App A), which clarifies that the police power of the state is to be constitutionally exercised, that they be reasonably-related to public health, safety, morals and order. But impaired contracts are <u>not</u> reasonably-related without an emergency, which is not the case here, a case of mere ordinary inhabitation and settling and improving, for it is the intention of the constitution to preserve all the obligatory force of contracts, Dartmouth at 683, see App G, note 15.

5.b. Said Decisions conflict with the clear and expressed intent of the Vermont Legislature, that the Act in question, Act 334, App E, which explicitly states, in "Subchapter 9, Section 4490, Construction of chapter, The provisions of this chapter shall not affect any act done, contract executed or liability incurred prior to March 23, 1968...", and which is clearly an expressed intent to exercise the police power constitutionally. And my contract with the State of

Vermont is from the 27th of October AD 1779 which is clearly prior to March 23, 1968. See App G, note 14, Bedroc at 10.

5.c. Said Second Court decision affirming Said First Court's order, p. 7, (App B), includes an affirmance of that part of the order binding not only me, but also my successors and assigns, until further order, to all these erroneous requirements, to which I have repeatedly objected, throughout the Record, as being outside the authority of said court.

6.As all of the above-listed Reasons show, and as I had previously and from the beginning brought my above-cited objections to Both Lower Courts' attentions, I was more than surprised that said Second Court made such an unexpected Decision and Order which:

- Overlooks all these objections
- Orders that I not perform my prior yet valid and proven contract
- Orders that I accept a new contract
- Orders that I impair my own contract
- Orders that my successors and assigns are bound by these orders
- Orders that I waive my vested right of contract and grant protection by the U. S. Constitution
- Orders that I, by said new contract, grant to others, who are strangers to my said prior contract, the authority to deny and prohibit my prior contract's requirements, in order to perform the required ordinary settling, cultivating, improving and inhabitation.
- Strips my said prior contract of the value of the valuable considerations, saying, in effect, that my rights in these valuable considerations are rights, but not rights protected from impairment.

- Redefines and limits these said considerations, granted by the State, by prior legislative Act, to the benefit of the State, which now, in error, believes it may impair without compensation, and which now puts me at risk of Forfeiture back to the State, the Grantor.
- Invents and applies a New Standard for impairment, by mere regulatory police powers, of 1779 Land Grants to ordinary proprietors; and which standard requires there to be an express exemption from later-enacted police powers which affect ordinary inhabitation; and which standard was not the standard at the time of said granting of settling and improving; and which New Standard is impossible for such Old and prior grants to meet, as the then-presumption was that the state's use of mere regulatory police powers would be compensated-for; and which New Standard is erroneously based on the proper conclusion that the Sovereign has not given up his power of Taxation unless expressly-so-granted, but which conclusion is misapplied to said Grant of property which already expressly demands forfeiture for non-performance of mere settling and improving and inhabitation, and which functions are not those of the sovereign, especially in a country like ours.
- Overlooks the clear wording and meaning of said Section 4490 of said Act 334, which the Legislature clearly stated is to be constructed so as not to affect or impair prior contracts. And which said Act 334 I have believed, from the beginning, to be constitutionally-written and intended to be constitutionally carried out, so that I did not object to its constitutionality, until the Final Order, which so unexpectedly upheld the interpretation to which I now object, the interpretation that said Act may impair my said vested rights.
- Concludes that the clearly- stated obligations of settling, cultivating and improving are not protected rights, that the implied meaning of these obligations does not

include the ability to perform unless accompanied by some express exemption from later-enacted police-powers which affect ordinary granted settling, cultivating, improving and inhabitation; and which concludes that the express reservation of Forfeiture does not expressly include the ability to so perform those obligations.

In fact, I am so surprised by this said Decision that I cannot but ask, what kind of grant was this? What kind of settling and cultivating was granted? How could it be a grant "in order for settling and cultivating the same", yet be a grant which does not include the power to so settle and cultivate? What kind of grant of land, absolute to the proprietors, as said Second Court has acknowledged in past decisions (see App G, note 13), could be yet so impairable, without compensation, by the Grantor, and so impairable to the advantage of the Grantor? If the considerations which were once so valuable, in spite of the difficulties and hardships of settling and improving at that time, can now be made to be of mere impairable value, and therefore of no value, then this is a contract without consideration, and thereby is no contract at all. Yet Dartmouth says that a grant of land is a contract, and is not to be impaired by later legislation.

And so, as these said Decisions to impair are so surprising and truly unexpected in light of the principles laid down in Dartmouth, and in light of the clear intent not to impair of said Section 4490 of said Act 334, I ask This Court to give me relief and remedy outside of my State's conflicted interest as party to the contract, and interpreter and judge of legislative intent of both Acts: said Charter and said Act 334;and I ask This Court to most seriously examine this my said charter and grant and ascertain its true character, and to perform its high and solemn duty of protecting my said grant of land contract, Dartmouth at 631 and 625, App G, note 16.

7. There is not an adequate and independent state ground for these said Lower Court decisions: these grounds are only alleged to be adequate by a decision based on an incorrect reasoning which rationalizes impairing my constitutionally-protected Rights of Contract. Although said Decisions are said to be decided partly on the State's police powers, in particular, the ability of the State to enact police power legislation after binding itself to a contract, and which later enacted-legislation allegedly may impair contracts with impunity; and, partly on the State's implied reservation in said 1779 Contract, to affect with impunity said contract by later-enacted police-power legislation, because of a lack of an expressly-granted exemption from such implied reservation and such implied police powers without-compensation. But this is clearly an effort by said state courts to adopt its views in order to evade a constitutional issue; and, is surely, as Mr. Webster said, in Dartmouth, at 556, " a rather summary mode of settling a question of constitutional right", (when he complained that "they are to be punished for not accepting the new grant, and taking its benefit"), and with which This Court did not disagree. Nor has any necessity been established by evidence in this matter of ordinary settling and improving, as I explained in 5.a.

This power to impair without compensation, which said Second Court claims to find in both said Legislative Acts, is said to be based on some necessity of applying this particular power against all landowners in Vermont: in the Act and Charter, it is interpreted that the privileges and immunities clause, p. 3 of said Grant, (App E), means that "the Charter of the Two Heroes provided no special property rights beyond those enjoyed by landowners in all towns", p. 3, Order, App A; FOOTNOTE # 3; and in said Act 334, Section 4490, it is said to be that the "shall not affect any prior contract" clause is interpreted to mean that

some of those "any contracts" are excluded from this protection and exemption when those contracts can be said not to contain the new impossible-to-meet standard of some express exemption from impairment by later-enacted regulatory police-power legislation regarding ordinary settling and improving. It is hard to believe that the clearly-stated intent of the 1968 Legislature can be so lightly un-done, so as to un-do the very provision that does make this particular police power not be unconstitutionally exercised. For if said Act 334 means what said Lower Court says it means, then the Legislature has gone too far, and the "shall not affect any prior contract" clause is meaningless. Lord Coke, cited in Dartmouth at 581, says: " no man shall be disseized, &c unless it be by the lawful judgment, that is, verdict of equals, or by the law of the land, that is, (to speak it once for all,) by the due course and process of law." And which law of the land must be, among other things, the prohibition against impairment of contracts, and not some ever-broadening police-power later-enactments which impair and take Rights without compensation, see App G, note 17.

As well, This Court did not disagree with the Dartmouth argument, which stated, at 561 and 569, that these privileges and immunities are the powers conferred on the grantees by lawful grant of the sovereign, see App G, note 18. And which granted powers and privileges are likewise guaranteed, not only by the U.S. Constitution's prohibition against impairment, but also by the Vermont Constitution, (which I here refer to only for the further emphasis that such rights are well-recognized as those which are to be protected): Chapter I, Articles 1st and 9th;which declares that all persons are born equally free and independent, and have certain natural, inherent, and unalienable rights, amongst which are the enjoying and defending life and liberty, acquiring, possessing and protecting property, and

that no part of any persons' property can be justly taken, or applied to public uses, without the person's own consent, or that of the Representative Body; and Chapter 2, Sections 66 and 71, which state that every person of good character who settles in this state may purchase, or by other just means acquire, hold and transfer land, or other real estate; and, that the Declaration of the political Rights and privileges of the inhabitants of this State , is a part of the Constitution of this Commonwealth; and ought not to be violated on any pretence whatsoever. And which protections of my rights I have claimed from the beginning

8.Said Second Court misapplies The Treaty of Peace of 1783,under which I have claimed from the beginning, as upholding my title and all I had been granted as Assign; and which Treaty, as part of my chain of title, and as certified proof connecting the Prior Royal Grant, (of 1769, of Grand Island to Elkanah Deane and others), to the later 1779 Vermont Grant of confiscated lands, which confiscations were later reimbursed by payment of $30,000.00 in silver money to New York claimants, by 1790 Act of the Vermont Assembly, and in accordance with, in particular, the terms of Article V of said Treaty, see App G, note 19, And under which Treaty the State of Vermont has <u>not</u> made any timely claim to the rights in the lands which were later granted in 1779, and which Treaty declared itself to be a <u>perpetual</u> peace. And which mis-application, in conjunction with the other two previously-mentioned mis-applications of said Vermont Acts of 1779 and 1968, is to conclude that that the Treaty did not preserve rights never granted. But, of course, rights granted <u>are</u> preserved. And I have proved that my rights are among those protected by said Treaty. For it is only by erroneously finding no vested rights of settling, cultivating, improving and inhabiting, or only finding such very <u>tiny</u> and naked rights, rather than 'Privileges', 'above others', 'by lawful

grant', as in App G, note 18, or, finding no right of inhabitation at all, that said Second Court can pretend a non-impairment.

9. Said Second Court decision, as above detailed, misapplies two Acts of the Vermont Legislature, both misapplications of which impair my prior contract.

10. This case is of importance to others similarly situated: To all landowners whose titles are the Recorded and Preserved Assigned Contracts and Grants of land by the Sovereign, whether Royal grants, State grants or U.S. Government grants, and which grants are the sources of almost all, if not all, lands in private ownership in this country. And upon which grants' *habendum*, the to have and to hold clause, when similarly-worded to this my particular grant, as were the grants of that time, and as likely were others after that time, this said Second Court decision, if allowed to stand, will become a precedent which other courts will rely on for impairment of contract. But which decision I plead This Court to review, to continue to secure the nationally-protected rights of contract as well as not to leave standing a decision not uniformly consistent with This Court's prior decisions, on which I have relied.

In Vermont alone, there are thousands upon thousands of land titles which will be affected by said Second Court decision, as there were well over 100 Grants of land by the King of England, and also well over 100 Grants of land by the State of Vermont, almost all of which grants were of 23,400 acres, sometimes more, sometimes less, granted originally to between a dozen to over 100 original proprietors per grant. And most of those grants have been assigned and re-assigned to more and more owners until there are now many owners of ½ acre, or less, who are successors in title to those very grants, as I myself am. And those grants contain the provision, "Declared to be

Enfranchised and Entitled to all the Privileges and Immunities of the other inhabitants of this State" (or, "...of this Province", in the case of the Royal grants), and the *habendum* of which grants, give the 'Said Granted Premises', and name the grantees and their granted rights by the phrase, 'as above expressed'. And in all of which grants, it can now be said, (and be uniform with the new established precedent of said Second Court decision), that no right of inhabitation can be found; for they too, hold their property by the same tenure, and no other, having been established substantially in the same manner. And these grants can now all be said to require some express exemption from later-enacted police-power legislation in order to be protected from impairment without compensation.

As well, there were Royal Grants in all the colonies which later became States, and which grants, too, have been assigned and re-assigned to thousands upon thousands of successors in title in all those other states. Are these grants, with their similar wording, and for the sake of uniform judgments, now to be said to have no right of inhabitation, and no protection from impairment unless they contain the said express exemption?

Said Second Court decision, if allowed to stand, also sets a standard, in the case of a State as Grantor, that the all-powerful party to the contract, the State, may, with impunity, later re-construct and construe its own contract to mean something other than what it clearly meant at the time of the granting. This new power of impairment can be used by any of the many states which have made grants, as well as by the Federal government which has also made many grants of land.

Said decision also sets a standard which accepts and affirms an objected-to presumption of Forfeiture, (on no evidence and no direct hearing), and a conclusion, based on

said presumption, of non- continuing contract; and which standard can be applied to grants of land contracts as well as to other contracts.

Said decision also establishes a precedent for a so-broad State police power that now includes impairment of the State's own prior contracts, without compensation; contracts in which the State has reserved no right to alter or amend.

FOOTNOTES

FOOTNOTE #1: I have also asked, since 6-12-02, both first and second courts to consider the clear language of the Grant, which controls, citing Romart v City of New Rochelles, which cites Lowndes v Huntington, and, if that said language isn't clear, these cases say to ascertain the intent from all the circumstances surrounding the grant, and that the appurtenances clause may be considered to resolve ambiguity by ascertaining the intention of the grantor.

FOOTNOTE #2: And, as well, Points #4 and #5, above, are also actions by said Lower Courts, which exceed the above-said 'remaining authority'.

FOOTNOTE # 3: In fact, it is more reasonable to believe that all landowners in all Towns do indeed have the property rights today that their predecessors in title were granted in 1779, (and as those rights were then granted, being not diminished by Regulation of ordinary settling and improving), when those rights vested and were the obligations required to be performed, without further Grant; and that they are indeed special property rights.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Ivan-James: Pat

Date: July one, 2004

VERMONT SUPREME COURT
FILED IN CLERK'S OFFICE
MAR 09 2004

ENTRY ORDER

2004 VT 24

SUPREME COURT DOCKET NO. 2002-468

NOVEMBER TERM, 2003

Town of Grand Isle	} APPEALED FROM}:
	}
v	} Environmental Court
	}
Ivan Patry	}
	} DOCKET NO. 124-6-02 Vtec

Trial Judge: Merideth Wright

In the above-entitled cause, the Clerk will enter:

¶1. Landowner Ivan Patry appeals from the environmental court's decision ordering him to remove his trailer and to apply to the Town of Grand Isle for various land-use permits before developing his property. We reject landowner's contention that a two-hundred-year-old land great, from which he claims he can trace his chain of title, precluded the Town from applying state and local zoning laws to his property. Accordingly, we affirm the environmental court's decision.

¶2. Landowner acquired the subject property by quit-claim deed on May 14, 2002. Because the property is only 45 feet

wide and 480 feet long, any dwelling would violate the Town's 25-foot setback requirement. Nevertheless, without applying for any municipal permits or variances, landowner placed a travel camper on the property, uncovered a failed septic system and began to construct a water drainage system. He planned to replace the old septic system and build some type of residence on the property. On May 20, 2002, the Town's zoning administrator issued a written notice detailing several zoning violations and informing landowner that he could appeal the notice of violation to the Town's development review board within fifteen days.

¶3. On Jun4, 2004, the fifteenth day following the notice of violation, the Town asked the environmental court to preliminarily enjoin landowner from engaging in any further development activity on the property.* Two days later, the Town filed a complaint seeking injunctive relief and the imposition of monetary penalties. On June 14, 2004, following a hearing, the court granted the Town's request for a preliminary injunction. The court ruled that landowner was required to apply for municipal permits, even assuming that the property had been passed down in an unbroken chain of title from the original 1779 land grant. The court ordered landowner to remove the travel trailer from the property until he obtained a setback variance, to apply for a drainage permit for drainage work already done, to apply for a septic system permit, to obtain a variance for setback requirements pertaining to any other work done on the property and to apply for a building permit. In an October 14, 2002 decision, after landowner unsuccessfully attempted to have the case removed to federal court, the environmental court denied landowner's motion for reconsideration and directed an entry of final judgement as to the issues decided in its June 14 order. The court decided that landowner should not be subjected to a hearing on penalties until he had an

opportunity to appeal the question of whether the Town's zoning laws applied to his property.

¶4. On appeal, landowner argues that the environmental court erred by subjecting his property to the Town's zoning laws. He contends that a 1779 land grant known as the "Charter of the Two Heroes," from which he claims his property was passed down through an unbroken chain of title, is a contract that conferred a right of inhabitation and other privileges, and that 24 V.S.A. § 4490 prohibits the Town from applying its zoning laws to interfere with those rights obtained under the land grant. Section 4490 states that the provisions of the Vermont Planning and Development Act, 24 V.S.A. §§ 4301-4495, which took effect in March 1968, "shall not affect any act done, contract executed or liability incurred prior to March 23, 1968." The Act sets forth statewide criteria for the implementation and enforcement of local zoning ordinances. See 24 V.S.A. § 4401(b)(1) (authorizing municipalities to adopt zoning regulations to permit, prohibit, restrict, regulate and determine land development); id. § 4443(a)(1) (prohibiting land development within area affected by zoning regulations unless administrative officer issues zoning permit in conformance with regulations); id. § 4445 (authorizing zoning administrator to institute enforcement proceedings upon violation of zoning laws).

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* Apparently, landowner never appealed the zoning administrator's notice of violation, even though the notice satisfied due process requirements by informing him that he had fifteen days to appeal the decision to the development review board. See Town of Randolph v. Estate of White, 166 Vt. 280, 287, 693, A.2d 694, 698 (1997) ("to meet due

166 Vt. 280, 287, 693, A.2d 694, 698 (1997) ("to meet due process requirements, the notice of a zoning violation must inform the defendant how to contest the decision."). Under §§ 4464(a) and 4472(a) of Title 24, the exclusive remedy for seeking review of a zoning administrator's decision is to appeal within fifteen days of the decision to the board of adjustment or the development review board. Failure to do so precludes an interested part from challenging a notice of violation in a later enforcement proceeding. See Town of Charlotte v. Richmond, 158 Vt. 354, 356-57, 609 A.2d 638, 639 (1992). In this case, however, the environmental court did not consider this issue, and the Town has not raised the issue either before the environmental court or here on appeal. Under these circumstances, we will address the merits of landowner's appeal.

¶5. We find no merit to landowner's argument. The Charter of the Two Heroes does not immunize land conveyed therein from land-use regulation later enacted pursuant to the state's police powers. See Galanes v. Town of Brattleboro, 136 Vt. 235, 240, 388, A.2d 406, ___ (1978) ("the sanction behind zoning laws is the police power of the state, constitutionally exercised where it is reasonably related to public health, safety, morals or general welfare"); 24 V.S.A. § 4302(a) (purpose of Vermont Planning and Development Act, among other things, is "to encourage the appropriate development of all lands in this state. . . in a manner which will promote the public health, safety against fire, floods, explosions and other dangers"). The Charter granted most of what is now known as Grand Isle to patriots who fought the British during the Revolutionary War. The Charter declares that those who thereafter inhabit the land shall be entitled

> to all Priviledges & Immunities that Inhabitents of other Towns do & ought by the Laws & constitution of this State exercise & Enjoy – To Have and to Hold, the said Granted Premises as above expressed, in equal Shares and Rights, with all the Priviledges, and appurtenances thereto belonging or appertaining unto them and their Respective Heirs forever.

The Charter of the Two Heroes (1779), State Papers of Vermont, Charters Granted by the State of Vermont 192, 195 (J. Williams ed., 2d ed. 1974).

We fail to see how this language confers upon the grantees or their heirs a "right of inhabitation" exempting them from zoning laws. The language awards the grantees land along with the concomitant privileges enjoyed by landowners in other towns. Nothing in that language, however, suggests that the Charter was intended to strip the state of any of its police powers, including the power to regulate land use and development. See Dodge v. Town of Worcester, 129 Vt. 441, 444-45, 282 A.2d 799, 801-02 (1971) (language in charters did not provide express perpetual exemption from taxation of leased lands; such exemption could be claimed only if it formed express condition of grant); Herrick v Town of Randolph, 13 Vt. 525, 530 (1841) (same). Further, the fact that modern zoning did not exist at the time of the 1779 land grant does not demonstrate that the state abdicated its right to exercise whatever police powers would be required at a later time. See Williams v. Town of North Hero, 45 Vt. 301, 319 (1873) (provisions of 1779 land grant "were not settled and adopted with sharpness of attention to the terms used, or with cautious consideration of the possible questions that the course of events thereafter in the progress of population and society, might give rise to").

¶6. Landowner's reliance on the Treaty of 1783 is even more tenuous. Apparently, landowner claims that the Treaty, which was intended to resolve land disputes between American and British citizens following the Revolutionary war, provided a limited amount of time for anyone to contest the property rights granted under the Charter of the Two Heroes, and that the Town, having failed to do so, cannot now apply its zoning laws in degradation of those property rights. This case does not involve any land dispute between British and American citizens. Now is it likely that such a dispute would be actionable more than two hundred years after the fact. Cf. Robins Island Preservation Fund v. Southold Dev., 959 F.2d 409, 422 (2d Cir. 1992) (finding "no logic in the proposition that Great Britain and the United States bargained for and created a right of action that would survive the inaction of the aggrieved parties and their heirs over a period of centuries"). In any event, as noted, no rights granted in the Charter exempted landowner from the application of municipal zoning laws; therefore, the Treaty could not have preserved any such rights.

¶7.Landowner's reliance on 24 V.S.A. § 4490 is also unavailing. Section 4490 provides that the Vermont Planning and Development Act "shall not affect any act done, contract executed or liability incurred prior to March 23, 1968." As noted, the Charter of the Two Heroes provided no special property rights beyond those enjoyed by landowners in all towns, and thus is not inconsistent with the imposition of zoning regulations. As with the Treaty of 1783, § 4490 cannot preserve rights never granted in the Charter. Sections 4490 does not exempt from the Act all land in which title can be traced to pre-existing land grants. Rather, the provision merely acknowledges that the Act would have no effect of pre-exiting, executed contracts concerning land use or

development – such as contracts to convey parcels of land below the minimum acreage allowed under zoning regulations. Without the support of § 4490 or the eighteenth century documents, landowner's argument amounts to only a premature takings claim. See Killington, Ltd. v. State, 164 Vt. 253, 257, 668, A. 2d 1278, 1281 (1995) (regulatory takings claims are not ripe for review until applicant has obtained final decision regarding permit request and has utilized state procedures for obtaining just compensation).

¶8. Although the Town did not file a cross-appeal, it raises two arguments of its own. first, the Town contends that the environmental court erred by accepting a lay witness's testimony concerning the title search done on the subject property before us. The environmental court made no legal ruling on the validity of landowner's title search; rather, the court merely assumed, for purposes of this litigation, that the subject property has been passed down to landowner through an unbroken chain of title from the Charter of the Two Heroes.

¶9. The Town also argues that the environmental court erred by directing entry of final judgement with respect to Town's request for a preliminary injunction without determining what fines should be assessed against landowner. We conclude that the Town's claim of error is both inadequately briefed and unnecessary. While the environmental court's decision to direct a final judgement in this matter is questionable, see Kelly v. Lord, 173 Vt. 21, 31, 783, A.2d 974, 982 (2001) (setting forth necessary prerequisites for invoking Rule 564(b), including requirement that there be multiple parties or claim for relief); 10 C. Wright, A. Miller, & M. Kane, Federal Practice and Procedure § 2656, at 48 (3d ed. 1998) (nothing that Rule 54(b) may be invoked only in

relatively select group of cases and applied to even more select category of decisions), Town fails to brief issues concerning the limits of Rule 54(b) or the nature of orders granting preliminary injunctive relief. In any event, the relief the Town is seeking – remand for the environmental court to consider the Town's request for penalties – follows from our affirmance of the court's June 14 and October 14, 2002 orders. In short, assuming that the Town's argument is properly before us, it is superfluous.

Affirmed; cause remanded for further proceedings in the environmental court.

BY THE COURT:
"s/Jeffrey L. Amestoy, Chief Justice"
"s/John A. Dooley, Associate Justice"
"s/Denise R. Johnson, Associate Justice"
"s/Marilyn S. Skoglund, Associate Justice"
"s/Paul L. Reiber, Associate Justice"

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STATE OF VERMONT

FILED
JUN 14 2002
VERMONT
ENVIRONMENTAL COURT

ENVIRONMENTAL COURT

Town of Grand Isle,
Plaintiff,

v.

Docket No. 124-6-02 Vtect

Ivan Patry and
Michael Bilodeau
Defendants.

Decision and Order Regarding Jurisdiction and Preliminary Injunction

The Town brought a zoning enforcement action against Ivan Patry, the present occupant and owner or purchaser of the parcel in question, and against the former owner or seller of the parcel, Michael Bilodeau, seeking injunctive relief and money penalties for work done on the parcel without a permit. The town also moved for a preliminary injunction solely against Ivan Patry, also referred to in this decision as the landowner.

A hearing was held on the preliminary injunctive relief at the courthouse in North Hero, Vermont. Ivan Patry appeared and represented himself, and was assisted at counsel table by Barbara Ann Sempf; the Town of Grand Isle is represented by Edward G. Adrian, Esq. An evidentiary hearing was held in this matter before Merideth Wright, Environmental Judge. The parties were given the

opportunity to submit written argument and also argued orally on the record. Upon consideration of the evidence, the written materials and the oral argument, the Court finds and concludes as follows.

By quitclaim deed dated May 14, 2002 and recorded May 20, 2002, and by warranty deed dated June 7, 2002 and recorded June 10, 2002, Ivan Patry acquired from Michael Bilodeau a long narrow parcel of property, approximately 45 feet wide and 480 feet long, located at an address known as 3 Pent Road. For purposes of this litigation, the Court accepts that this property has been passed down in an unbroken chain of title from the original land grant in 1779 of the islands known as the "Two Heroes." At some time in the more recent past, the property contained a single family dwelling with a failed subsurface wastewater disposal field. The single family dwelling has been removed, but its slab foundation remains on the property. The former subsurface waste disposal system ("leach field") has been excavated by or on behalf of the landowner, and was in a failed, flooded condition when excavated.

A witness made reference to the property's having been 'condemned' in the past under the health statutes regarding the failure of the septic system. Although the former residence on the property may have received a permit for construction on an existing small lot, under the protections for existing small lots under the state zoning enabling act and the Town's zoning regulations, no prior permit for this property was presented in evidence. Nor was any 'condemnation' order or other health order presented in evidence (see 18 V.S.A. §§ 122 and 602a). Therefore we make no findings regarding whether the property is subject to any health order or any zoning permit.

Since May 14, 2002, Ivan Patry and people working on his behalf have uncovered the failed septic system, have installed perforated drainage pipe and crushed stone in the

rear portion of the property to conduct water from the property onto the property of a neighbor, Mr. LaFramboise, and have placed a travel camper on the slab formerly occupied by the former dwelling[1]. Ivan Patry and people working on his behalf plan to install a replacement septic system and some type of residence on the property. Ivan Patry has not applied for any municipal permits for any of this work.

Because the property is only 45 feet wide, and the required side setbacks are 25 feet from each side, there is no location on the property on which a structure or a travel trailer can be placed in compliance with the setbacks. Accordingly, the property needs a variance for any structure to be placed.

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[1] They have also installed a fence blocking visibility of a portion of the property and have 'unlocked' a water supply pipe served by the local water district. However, no zoning violations are claimed in connection with those actions. 18 V.S.A. § 121 may apply to the town's access to the property under the health statutes.

Because the existing septic system has failed and needs to be replaced, the property needs a septic permit. if the property must be drained in order to install a septic system or for any other reason, it needs prior approval of the drainage. If the property must be drained or if a septic system must be installed in order for the landowner to make reasonable use of the property, it may require a variance also for the drainage or septic permits. If a building is to be placed or built on the property, the landowner must obtain a building permit.

The only question before the court in the present proceeding is whether the landowner should have applied for an obtained any permits from the Town of Grand Isle prior to doing the work that has been done on the property at issue. If so, the Town is entitled to an injunction to stop the work and to require the landowner to apply for and receive all required permits prior to continuing with the work on the property.

We first note that this court has no jurisdiction to determine any property rights or other private rights of action between Ivan Patry and the Town, between Ivan Patry and Michael Bilodeau, between Ivan Patry and the water district, or between Ivan Patry and any of the neighboring landowners. See, e.g., 10 V.S.A. § 1410; 18 V.S.A. § 122. Any lawsuit to enforce such rights would have to be filed in the Grand Isle Superior Court. Similarly, the superior court has jurisdiction under 24 V.S.A. § 4472 over claims that a zoning regulation is unconstitutional. Similarly, the superior and district courts have jurisdiction over enforcement of health orders under 18 V.S.A. §§ 130 and 131. (If any related matter are filed, they may be scheduled to be heard together with the merits of this case, by a single judge assigned to all related matters).

However, the Town does not claim any property rights in this land, and does not seek to establish any right of way, servitude, easement or other encumbrance on this land. Rather, the Town asserts its exercise of police power to regulate the landowner's use of his land. Now does Ivan Patry argue that the zoning regulation is unconstitutional on its face[2].

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[2] Mr.. Patry cannot argue that the zoning regulation is unconstitutional as applied, because he has not filed an application for a variance, a septic permit, a drainage

permit, a building permit, or a certificate of occupancy. It may well

Mr. Patry argues instead that the Town has no right to regulate his land due to the property rights acquired by his predecessors in title under the 1779 land grant of the so-called "Two Heroes" and confirmed under the 1783 peace treaty. That land grant essentially granted property ownership to persons willing to develop and cultivate at least two acres of each parcel granted. However, that land grant did not create a continuing contract[3] over the intervening two centuries between the grantee and the grantor. Rather, if the grantee fulfilled all the prerequisites of the grant, the grantee obtained ownership in a fee simple. The peace treaty set a time period for contesting any grants, so that land titles would become settled in the new nation.

State courts do not have jurisdiction over treaties entered into between the United States and foreign governments, such as the 1783 treaty of peace between the United States and Great Britain. If that treaty were essential to the determination of the issue in this case, Mr. Patry would be free to apply to the U.S. District Court for the District of Vermont to remove this dispute to federal court. However, the treaty does not determine this case, because the Town's authority derives from the police power, one of the sovereign powers reserved to the states under the 10th Amendment to the U.S. Constitution.

Because this case does not involve a property dispute, does not claim that the zoning ordinance is unconstitutional, and does not seek to enforce a health order, there is no bar to jurisdiction in the Environmental Court as distinct from the superior of district court. Because this case is not determined by the 1783 Treaty of Peace, there is no bare to jurisdiction in the Environmental Court as distinct from a federal court.

The landowner's argument confuses the legal concepts of property rights and the police power. Governmental regulation based in the police power does not violate the constitutional protection against governmental taking of private property without compensation, unless the regulation is so stringent that it leaves the landowner without a reasonable use of the property. In enacting the zoning enabling act, Chapter 117 of Title 24 of the Vermont Statutes, the legislature included several provisions to protect preexisting property rights and to ensure that landowners are not deprived of the opportunity to make reasonable use of their property. Thus, the legislature exempted the continued use and maintenance of pre-existing structures and uses, so long as they have not been abandoned by the owner. The legislature also provided that pre-existing small undeveloped lots could be developed, even if they are too small for development under later-adopted zoning regulations. The legislature provided a variance procedure in 24 V.S.A. §4468, specifically addressing whether the variance is necessary to enable the landowner to make reasonable use of the property.

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be that his land meets the requirements for a variance of the setback requirement, to allow him to make a reasonable use of the property, but we do not know that a variance would have been denied, as he has not yet applied for one.

[3] Otherwise current landowners would continue to be at risk of forfeiting their property back to the state for failing to cultivate at least two acres of it in perpetuity. Similarly, we need not address the question of what rights if any remained under the original land grants if the parcel size fell below two acres, as has occurred with the present parcel.

However, nothing in the constitution or the zoning enabling act exempts a landowner from having to file an application with the town for a zoning permit, a septic permit, a drainage permit or a necessary variance, in order to determine whether the property is entitled to one of the exemptions or to a variance. Such an application is the mechanism by which the landowner has the opportunity to claim to the Town's DRB that the property is entitled to an exemption or a variance, to avoid a regulatory taking of the property. Such an application must be made to the town in the first instance, before the Court can consider the issue in an appeal from the Town's Development Review Board decision.

The bottom line is that Ivan Patry may or may not be entitled to exemption of his property as an existing small lot. He may or may not be entitled to a variance to make a reasonable use of his property. He may or may not qualify for a permit to install a replacement in-ground septic system, or some other form of innovative treatment of household wastewater. He may or may not qualify for a town[4] drainage permit.

The Court does not make any determination here today of whether the property in question qualifies for any such permits. The Court is not allowed to rule in the first

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[4] He also may or may not have to obtain a state wetlands conditional use determination for work on the site.

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instance on the merits of any of these permits. The legislature has assigned that task to the Town's Zoning Administrator or Development Review Board; the Court may determine the merits of such permits only in an appeal from the Development Review Board.

What we do determine today is that Ivan Patry or any subsequent owner of the parcel must apply for a zoning or building permit, a variance, and, if necessary, a septic permit and a drainage permit, before placing a structure on the property, before installing a wastewater disposal system, and before installing any drainage piping or other wise increasing the drainage from the property. All further work on the property must cease until the appropriate permits and variances are applied ror and granted[5].

Based on the evidence, we will not require the removal or digging up of any of the drainage structures that have been installed to date, as long as they are not hooked up to any source of household wastewater. Such removal may be the subject of the hearing on the merits of permanent injunctive relief in this matter.

Based on the foregoing, with respect to the parcel of land described above and known as 3 Pent Road, it is hereby ORDERED and ADJUDGED that until further order of this court, Ivan Patry, his agents, successors and assigns, and all others acting in concert with him,

1. Shall remove the travel trailer until obtaining a variance from the setback requirements for the travel trailer, at which time the travel trailer may be replaced on the property so long as it is not connected to the water supply or wastewater disposal systems on the property and complies with the other requirements of the zoning ordinance regarding travel trailers;
2. Shall apply for a drainage permit for the drainage work already installed and shall cease and desist from any further work on the drainage of the parcel until such permit is obtained;
3. Shall apply for a septic system permit and shall cease and desist from any further work on the replacement of the septic system or any other wastewater disposal system on the parcel until such permit is obtained;

[5] We must note for the parties' guidance that if any permit or variance applications are denied, those denials must be appealed or the Court cannot consider the merits of those applications in any later enforcement proceeding.

4. Shall apply for a variance from the setback requirements and from any other relevant requirements of the zoning regulations necessary to construct the wastewater disposal system and any building or structure on the parcel and shall cease and desist from any further work on the wastewater disposal system and any building or structure on the parcel until such variance is obtained; and

5. Shall apply for a zoning or building permit to place or construct any building on the parcel and shall cease and desist from any further work on the drainage of the parcel until such permit is obtained.

Dated at Barre, Vermont, at 4:00 p.m. this 14th day of June, 2002.

"s/Merideth Wright"
Environmental Judge

STATE OF VERMONT
VERMONT ENVIRONMENTAL COURT

FILED
OCT 14 2002
VERMONT

ENVIRONMENTAL

COURT

Town of Grand Isle v. Patry Docket No: 124-6-02
Vtec

Entry Order pursuant to V.R.C.P. 54(b) and addressing reconsideration

This court held an evidentiary hearing and on June 14, 2002 issued a decision and order resolving the legal and factual issues in this enforcement action (other than as they relate to penalties) and granted preliminary injunctive relief to the Town. Mr. Patry removed the case to federal court to address the effect of the 1783 treaty between Great Britain and the United States on his defenses to this enforcement action. This matter has been remanded from the federal court.

In response to the Court's September 10, 2002 scheduling order, the Town has requested that this matter be set for trial on permanent injunctive relief and to adjudicate the Town's claim for $100 per day in monetary penalties. This request in premature until and unless Mr. Patry has applied for the required permits and those applications have been fully adjudicated. On September 236, 2002 Mr. Patry filed a 40 page document (plus two additional pages filed today), on page 1 on which he appears to be requesting either to appeal the June 14, 2002 order, or for the Court to reconsider and "discharge, remove and withdraw its said

erroneous order." In support of reconsideration Mr. Patry presents no additional arguments to cause the Court to modify or vacate the June 14, 2002 order, and therefore his request for reconsideration is DENIED.

The June 14, 2002 decision determined that Mr. Patry should have applied for and obtained the necessary municipal permits, including any necessary zoning permit, drainage permit, septic permit, building permit or any variance, prior to beginning the site work; and granted the Town an injunction requiring Mr. Patry to stop work and apply for and receive any required permits before resuming the work. It also determined that the Environmental Court lacked jurisdiction to adjudicate any property rights or any private rights of action in the land. All the issues resolved in the preliminary injunction decision and order (attached) are ready for appeal and there is no just reason to delay Mr. Patry's ability to appeal those issues. Therefore, under V.R.C.P. 54(b) we HEREBY DIRECT the entry of final judgment as to the issues addressed in the June 14, 2002 preliminary injunction order. Mr. Patry MAY APPEAL to the Vermont Supreme Court from that order as of this date; his appeal period is counted as if the order had been issued today. In this way, Mr. Patry will not be subjected to a hearing on the question of penalties before he has exercised his right to appeal the question of whether his land is subject to the permitting requirements at issues in this case.

"s/Meredith Wright, Environmental Judge"
"DATE"

Date 10/14/02 copies sent to: Clerk's Initials
Atty. Adrian & Mr. Patry

Appendix C 1

VERMONT SUPREME COURT

FILED IN CLERK'S OFFICE
APR 14 2004

ENTRY ORDER

SUPREME COURT DOCKET NO. 2002-468
APRIL TERM, 2004

Town of Grand Isle	}	APPEALED FROM:
	}	Environmental Court
v.	}	
Ivan Patry	}	
	}DOCKET NO. 124-6-02 Vtec	

In the above-entitled cause, the Clerk will enter:

Appellant's motion to reargue filed March 22, 2004, fails to identify points of law or fact overlooked or misapprehended by this Court. The motion is therefore denied. See V.R.A.P. 40.

BY THE COURT:

"s/Jeffrey L. Amestoy"	Chief Justice
"s/John A. Dooley"	Associate Justice
"s/Denise R. Johnson"	Associate Justice
"s/Marilyn S. Skoglund"	Associate Justice
"s/Paul L. Reiber"	Associate Justice

US Constitution, Article I Section 10.

No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing its inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Controul of the Congress.

No State shall, without the Consent of Congress, lay any duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

Subchapter 9. Construction of Act, Saving Clause, Severability

§ 4490. Construction of chapter

The provisions of this chapter shall not affect any act done, contract executed or liability incurred prior to March 23, 1968, or affect any suit or prosecution pending or to be instituted, to enforce any right, rule, regulation, or ordinance or to punish any offense against any such repealed laws or against any ordinance enacted under them. All ordinances, resolutions, regulations and rules made under any act of the general assembly repealed by this chapter shall continue in effect as if such act had not been repealed, except as otherwise specifically provided in this chapter.–Added 1967, No. 334 (Adj. Sess.), § 1, eff. March 23, 1968.

Chapter 173. Forfeiture of Grants

§ 4981. Grant defined; acts of incorporation

The word "grant" as used in this chapter shall mean grants or charters of lands lying in this state, made by the kind of Great Britain, or by this state or any other government; acts of the general assembly grating to individuals rights or privileges not common to all the citizens of the state; and acts of incorporation for any purpose.

§ 4982. Grantee defined

The word "grantee" as used in this chapter shall mean the person to whom such land, rights or privileges were granted, and the representatives or assigns of such persons, or the corporation thus created.

§ 4983. Grounds for forfeiture of grants

Grants may be adjudged forfeited for the nonperformance of a condition annexed to or contained in such grant, whether expressed, or from the nature of the grant, clearly implied.

§ 4984. Effect of judgment

When a grant is adjudged forfeited, the grantee shall thereby be divested of the rights, benefits and privileges derived therefrom. The grant shall be considered vacated and the thing granted shall revert to the state.

§ 4985. Mode of process; venue

The mode of process shall be by summons and complaint and the action shall be held in the county court

of the county in which the land lies, if it is a grant of land. If it is an act of incorporation, the action shall be held in the county in which any part of the business of the corporation is done, or, by the terms of the act, should be done.–Amended 1971, No. 185 (Adj. Sess.), § 144, eff. March 29, 1972.

§ 4986. Prosecution of complaint

The complaint shall be prosecuted in the name of the state by the state's attorney of the county in which the action is pending.–Amended 1971, No. 185 (Adj. Sess.), § 145, eff. March 29, 1972.

§ 4987. Repealed. 1971, No. 185 (Adj. Sess.), § 237, eff. March 29, 1972.

§ 4988. Prosecution by state's attorney

On the application of twenty or more freeholders of the county, the state's attorney shall commence and prosecute the action against a corporation, if, in his opinion, the grant of the corporation is forfeited, and the public good requires that it should be adjudged forfeited.–Amended 1971, No. 185 (Adj. Sess.), § 146, eff. March 29, 1972.

§ 4989. Grantees may defend severally; jury trial

When several grantees claim under the same grant, each may answer separately, denying the allegations in the complaint, or pleading performance of the conditions of the grant or asserting any equitable reason why the grant should not be forfeited. Issues of fact shall be tried by jury, and the jury may return a general or special verdict, except that issues raised by any equitable defense shall be determined by the presiding judge.

§ 4990. Judgement on default; proof required

When the grantee does not answer or appear and sufficient facts are proved on hearing, the court may adjudge the grant forfeited.–Amended 1971, No. 185 (Adj. Sess.), § 148, eff. March 29, 1972.

§ 4991-4994. Repealed. 1971, No. 185 (Adj. Sess.), § 237, eff. March 29, 1972.

§ 4995. Copy of judgment transmitted to secretary of state

When final judgment has been rendered that a grant is forfeited, the clerk of the court within thirty days from the rendition thereof, shall transmit to the secretary of state a certified copy of such judgment to be recorded and kept in his office.

§ 4996. Writ of possession

When judgment of forfeiture is thus rendered and transmitted, and the thing granted is capable of actual possession and occupancy, possession thereof may be obtained by the state or by a second grantee, by a writ of possession. Such writ shall be issued by the court rendering such judgment, on motion of the state's attorney or the second grantee, but only after reasonable notice of the motion has been given to the party in possession.

THE CHARTER OF TWO HEROES

THE GOVERNOR, COUNCIL, & GENERAL ASSEMBLY , OF THE FREEMEN OF THE STATE OF VERMONT, (L. S.) *To all People to whom these Presents shall come* GREETING.

KNOW YE, that whereas, COLONELS, ETHAN ALLEN, & SAMUEL HERRICK, and their associates our worthy Friends, have by Petition requested a Grant of Certain large Island, lying and being, situate in Lake Champlain, in this State, and know sometimes by the name of GRAND ISLE Alias GREAT ISLAND, in order for settling and Cultivating the same and thereon making a New plantation; WE HAVE therefore thought fit for the due encouragement of their laudable designs, and for other valuable considerations us hereunto moving, and do by these Presents in the name & by Authority of the Freemen of the State of VERMONT, give and Grant the Tract of Land of Island aforesaid, hereafter more fully discribed & bounded, unto them the said Ethan Allen, & Samuel Herrick, & to the several persons hereafter named their associates viz^{t} Thomas Chittenden, Joseph Bowker, Jonas Fay, Timothy Brownson, Ira Allen, Jeremiah Clark, Paul Spooner, John Fassett Ju^{r} Thomas Chandler Ju^{r} John Throop, Benjamin Emmons, Samuel Fletcher, Benjamin Garner, Nathan Clark, Samuel Robinson, David Galusha, Mathew Lyon, Daniel Comstock, Martin Powel, Joshua Fitch, Adonijah Strong, Moses Robinson (ruport) Ithamer Hibberd W^{m} Fitch, William Ward, Jesse Belknap, Thomas Rowley, William Gage, Solomon Stanton, Nedebiah Angel, Ezekiel Clark, Aaron Kellogg, Uriah Seymour Ju^{r} Samuel Robinson Ju^{r}, John Smith (of Rutland east side), Ebenezer Drewry,

Timothy Barker, Nathan Foot, Isaac Clark, John Norce, William Samuel Johnson, Hubbel Wells, Edward Harris, Silas Hamilton, William Williams, Jonathan Underwood, Ebenezer Merrick, Jonathan Knight, Jason Duncan, Abner Miles, Nathaniel Robinson, Joshua Webb, Reuben Jones, Edward Aikin, William Upham, John Russel, Ebenezer Curtis, Benjamin Wait, Andrew Spear, Nathan Howland, Joseph Tucker, Azariah Wright, Judah Moore, Bethel Hurd, John March, Elkanah Sprague, Jonathan Cadey, Joseph Wood, Joel Butler, Alexander Parmalee, Daniel Pinneo, Samuel Webbster Ju^{r} George Smith, steel Smith, Noadiah Russel, John Coffin, Gershom Beach, Beriah Green, Joseph Bradley, Hezekiah Hooker, David Robinson, William Hunter, John Powell, Nehemiah Lovel, Elias Keys, Francis Whitmore, Abel Dimmick, John Train, Abner Blanchard, William Hill, Caleb Owen, Amos Peabody, Thomas Hunt, John Hamilton, Samuel King, Josiah Boyden, Isaac Wheeler, Calvin Bill, Thomas Stearns, Matthew Long, William Stearns, John Eliot Chandler, Josiah Locke, Simeon Hatheway, Jesse Safford, William Gallup, Joel Mathews, Joseph Powers, John Spafford, Orange Train, Elisha Kilburn, James Smith, John Ashley, Elkanah Ashley, James Brookins, John Eaton, Cephas Kent, Amos Brownson, David Safford, John Wood, David Spafford, Thomas Rowley Ju^{r} Stephen Pearl, Jonathan Ormsby, Ebenezer Fisk, Trueman Powel, John Payne Ju^{r}, Col^{o} Roswell Hopkins, Joshua Tucker, Peter Walker, Amos Chamberlain, Robert Johnson, William Powers of Woodstock John Shepardson, William Pitkin, (Hartford) Nathaniel Killam, Richard Wallis, Samuel Webster Ju^{r} Gideon Warren Ezra Stiles, D. D. joel Marsh, Nathan Richardson, John Fulsom, Joseph Fay, Benjamin Hopkins, Samuel Safford, John Fisk, Stephen Powers, Amos Robinson, Fradick Smith, Asa Whetcombe, Nathaniel Brush, Levi Goodnough, Moses Johnson, Daniel Jewet,

Jeremiah Williams, John Smith (of Chester) Silas Hamilton Ju[r] Elisha Pratt, James Gray, Robert Bratten, Abner Moore, Chipman Swift, Bezalael Waffts, Joseph Tyler, Adna Banggs, Isaac Stowell, John Whitney Ju[r] Jabez Sergeants Ju[r] David Thurber, Ignatius Spraugue, Phinehas Rust, Seth Hodges, Lot Whitecombe, Amasa Powers, Fry Bayley, Jacob Wood, Ephraim Wood, Ethan Pier, Ebenezer Hyde, John Tilden, Nathaniel Smith, James Hooker, George Foot, Peter Roberts, Ebenezer Morse, John Cochran, Samuel Benton, Jacob Smith, Jeremiah, Whelpley, John Sawyer, David Brydia, Ebenezer Wallis, Curtis Kelsey, Jonas Galusha, Elijah Dewey, Job Stafford, Leonard Spawlding, Isaac Chamberlain, Elias Chamberlain, John Strong, 2[d], James Saunders, James Hopkins, Jabeza Bozideth, James Longworthy, Joseph Lyman, Henry Hopkins, Ebenezer Allen, Uriah Seymour, Zebulon Mead, Daniel Purdee, Jesse Sawyer, John Fay, Joseph Safford, Nathaniel Holmes, Daniel Herrick, Leonard Robinson, Daniel Storry, Oliver Sanford, John Fassett, Stephen Fay, Zadock Everist, Parmalee Allen, Andrew Barton, Benjamin Averist, Johnathan Saxton, Benjamin Fay, Jonathan Robinson, Stephen Mead, James Averist, John Stark, Eldad Brownson, Jonathan Fassett, Stephen Hopkins, W[m] Maltbie, John Benjamin, Thomas Cooper, John Lovejoy, Ebenezer Wood, Richard Wait, Solomon Strong, Samuel Allen, John Smith, Sylvanus Brown, Thomas Ashley, Josiah Grant, Reuben Rowley, Isaac Tichenor, Joseph Smith, Thomas Sawyer, Reuben Hermon, Gideon Adams, John Boardman, Daniel Coit, Oliver Train, Stephen Jenner, Israel Smith (of Thetford), Joshua Stanton, Amos Fassett, Shadrach Hatheway, Samuel Billings, Roswel Hopkins, Jesse Field, Josiah Fay, Moses Robinson Ju[r], Martin Chittenden, Gills Chittenden, John Lee James Murdock, Samuel Horsford, Nathan Allen, Jacob Safford, Silas Robinson, Ezekiel Brewster, William Brush, Benjamin Robinson 3[d] Amos

Galusha, John Sutherland, Jeremiah Clark Ju[r], Stephen Lawrence, Nathan Brownson, Benjamin Corey, Peter Harwood, Benjamin Matterson, Ithamer Horsford, Stephen Smith, Timothy Parker, Benjamin Whipple, Nehemiah Whipple, Abraham Jackson Ju[r], Major Robert Cochran, James Roberts, Elisha Allen, John Grant, Peter How, Enoch Woodbridge, Jared Knap Enoch Eastman, Isaac Knap, John Stewart, James Lewis, Simeon Lyman Ju[r], William Blanchard, Josiah Perry, Amos Huntington, Richard Barnum, Asahel Blanchard, Amos Watson, Ezra Mead, Robert Cochran, William Henry, Katey Maltbie, Joseph Rudd, William Hooker, Simeon Hatheway Ju[r], Henry Walbridge 2[d], Gideon Spencer, Nathaniel Spencer, Thomas Hooker, Elijah Fay, David Chamberlain, Comfort Starr, Abner Chamberlain, Abera Sealey, Levi Hatheway, Henry Clark, Samuel Sutherland, The Heirs of Abel Moutlon, *Abraham Jacob Lansignh*, Jonathan Peirce, *David Stone Peirce*, Azel Warshburn, James Bracket, Peter Farnum, Joshua Smith, Andrew Potter, Luter Filmore, Izaac Miller, Nathan Smith, Solomon Safford, Benjamin Perry, Timothy Bartholomew, Ezra Fellows, Heber Allen, david Hoit, Ebeneze Hovey Ju[r], Uzziel Clark, Chileab Brainard Smith, Eliphalet Dyer, Thomas Tolman, Timothy Stanley, Noah Chittenden, Elijah Galusha, Silas Safford, The Hiers of Philip Perry, Dec[d], the Heirs of Thomas Comstock, Dec[d], the Hiers of John Coburn Dec[d], Jonathan Wheaton, Solomon Robins, George Harris, Simeon Avvery, Carline Allen & Lorrain Allen. Which Together with the six following Rights or equal Shares reserved to the several Public uses in manner following, include the whole of said Island viz[t] on the south Part thereof, (or what is sometimes called the south Island,) one right for the first Settled Minister of the Gospel; one Right for the Support of the Ministry, and one Right for the Support of an English School, or Schools, And on the north Part thereof (or what

is sometimes called the north Island) an equal Number of rights, for the same uses, & purposes, the whole to be Located by the Proprietors of said Island justly & equitably, or quantity for quality, in such parts of said Island of Islands, respectively as they or their Committee, shall judge will Least incommode the Inhabitents of said Island when the same shall be fully settled & improved; which said six Rights or equal Shares, when Located as aforesaid, shall Together with their improvements, Rights, Rents, Profiets, Dues, and Intrest, remain Unalianably appropriated to the uses & purposes, for which they are respectively assigned, & be under the charge, direction, and disposal of the Inhabitents of said Island forever. WHICH Tract of Land, or Island, hereby given and Granted, as aforesaid, is bounded & discribed as follows viz[t] BEGINNING, *at the south End of a Large Island (commonly called Grand Isle) (or Grand Deal) situate in Lake Champlain, about three miles north of the mouth of onion River, Then extending Northerly, at low water Mark, boath on the Easterly & westerly showers of s[d] Island to the most Northerly Parts thereof, containing by estimation, about sixteen thousand acres of Land be the same more or less, Then Beginning at the south End of a Large Island commonly called Long Island, situate in Lake Champlain, about one hundred Rods, Northerly of the aforesaid Island, Then Extending Northerly at Low Water Mar Boat on the Easterly & westerly shores of said Island to the most Northerly Part thereof, containing by Estimation about Seven thousand acres of Land be the same more of Less, containing in the whole by estimation about Twenty three thousand Acres, be the same more or less.* AND, that the same be & hereby is Incorporated into one district, Township, or Incorporation by the name of the Two, HEROES. and the Inhabitents that do or shall hereafter Inhabit said Township, or Islands, by virtue of this Grant are declared to be Infranchised, and Intitled to all the

Priviledges & Immunities that the Inhabitents of other Towns do & ought by Laws & constitution of this State to exercise & Enjoy–To HAVE AND TO HOLD, the said Granted Premises as above expressed, in equal Shares or Rights, with all the Priviledges, and appurtenences thereto belonging or appertaining unto them and their Respective Heirs and Assigns forever, upon the following conditions viz[t] that each Proprietor in the said Two Heroes, his heirs, or assigns, shall Plant & cultivate two acres of Land, or have one Family Settled on each respective Right, within the Term of one year next after the Conclusion of the Present War, on penalty of each respective right of Share of Land in said Island not so improved, or settled, & the same to revert to the Freemen of this State, to be by their Representatives, Regranted to such persons as shall appear to Settle and cultivate the same, IN TESTIMONY, whereof we have caused the Seal of this State to be affixed In Council this 27 day of October AD 1779. And in third year of the Independence of this State. THOMAS CHITTENDEN.

By His Excellency Command
Joseph Fay Sec[y].

APPENDIX G

Note 1 Dartmouth at 643-644:"This is plainly a contract to which the donors, the trustees, and the crown (to whose rights and obligations New Hampshire succeeds) were the original parties. It is a contract made on valuable consideration. It is a contract for the security and disposition of property. It is a contract, on the faith of which, real and personal estate have been conveyed to the corporation. It is then a contract within the letter of the Constitution." And,
at 699: " The truth, however, is, that all incorporeal hereditaments, whether they be immunities, offices, franchises, or other rights, are deemed valuable in law. The owners have a legal estate and property in them, and legal remedies to support and recover them, in case of any injury, obstruction or disseizin of then. Whenever they are the subjects of a contract or grant, they are just as much within the reach of the Constitution as any other grant.", and are ,
at 700, "...just as much guarded as a contract for the use and dominion of property. Mere naked powers, which are to be exercised for the exclusive benefit of the grantor, are revocable by him for that very reason. But it is otherwise where a power is to be exercised in aid of a right vested in a grantee."
Note 2 Dartmouth at 639, "But if these words, considered alone, could admit of doubt, that doubt is completely removed by an inspection of the entire instrument", and ,
at 658, "The obligation imposed on them, and which forms the consideration of the grant, is that of acting up to the end or design for which they were created by their founder", and, at 641, "...and the perpetual application of that property to the objects of its creation".

Note 3 Dartmouth at 643: "Yet the contract would at that time have been deemed sacred by all. What has since occurred to strip it of its inviolability? Circumstances have not changed it. In reason, in justice, and in law, it is now what it was in 1769", and about which Dartmouth contract being for the exercise of a mere authority, This Court said, at 700, "Nor is there any solid reason why a contract for the exercise of a mere authority should not be just as much guarded as a contract for the use and dominion of property".

Note 4 Dartmouth at 637-638: " They apply to the government, state their beneficent object, and offer to advance the money necessary for its accomplishment, provided the government will confer on the instrument which is to execute their designs the capacity to execute them...There can be no reason for implying in a charter, which is given for a valuable consideration, a power which is not only not expressed, but is in direct contradiction to its express stipulations."

Note 5 Dartmouth at 637: " Because the government has given it the power to take and hold property in a particular form, and for particular purposes, has the government a consequent right substantially to change that form, or to vary the purposes to which the property is to be applied?"

Note 6 Dartmouth at 646: "Or do such contracts so necessarily require new modeling by the authority of the legislature, that the ordinary rules of construction must be disregarded in order to leave them exposed to legislative alteration?"

Note 7 Dartmouth at 658: "The subjects of the grant are not only privileges and immunities, but property, or, which is the same thing, a capacity to acquire and to hold property in perpetuity. Certain obligations are created, binding both on the grantor and the grantees. On the part of the former, it amounts to an extinguishment of the king's prerogative to

bestow the same identical franchise on another corporate body, because it would prejudice his prior grant. It implies, therefore, a contract not to reassert the right to grant the franchise to another, or to impair it....The rights acquired by the other contracting party are those of having perpetual succession..." and,"...the obligations imposed upon them, and which forms the consideration of the grant, is that of acting up to the end or design for which they were created by their founder.",

And, at 688, " A charter may be granted...", and, "Upon the acceptance there is an implied contract on the part of the grantees, in consideration of the charter, that they will perform the duties, and exercise the authorities conferred by it.", as at 690, "according to the terms, and for the objects stipulated in the charter."

Note 8 Dartmouth at 651: "By this contract the crown was bound, and could have made no violent alteration in its essential terms, without impairing its obligation."

And, at 652: " The will of the State is substituted for the will of the donors, in every essential operation of the college. This is not an immaterial change."

And, at 662: " the grant is in effect set aside, and a new contract substituted in its place; thus disappointing completely the intentions of the founder, by changing the objects of his bounty. And can it be seriously contended, that a law, which changes so materially the terms of a contract, does not impair it? In short, does not every alteration of a contract, however unimportant, even though it be manifestly for the interest of the party objecting to it, impair its obligation? If the assent of all the parties to be bound by a contract be of its essence, how is it possible that a new contract, substituted for, or engrafted on another, without such assent, should not violate the old charter?"

And, at 665: " In all respects, in which the contract has been altered without the assent of the corporation, its

obligations have been impaired; and the degree can make no difference in the construction of the above provision of the constitution."
And, at 682: " A grant in its own nature amounts to an extinguishment of the right of the grantor, and implies a contract not to reassert that right."
And, at 684: " Was it ever imagined that land, voluntarily granted to any person by a State, was liable to be resumed at its own good pleasure? Such a pretension would, under any circumstances, be truly alarming; but in a country like ours, where thousands of land titles had their origin in gratuitous grants of the States, it would go far to shake the foundations of the best settled estates."
And, at 710 and 711: " From this short analysis it is apparent, that, in substance, a new corporation is created including the old corporators, with new powers, and subject to a new control; or that the old corporation is newly organized and enlarged, and placed under an authority hitherto unknown to it." "If these are not essential changes, impairing the rights and authorities of the trustees, and vitally affecting the interests and authorities of the trustees... it is difficult to conceive what acts, short of an unconditional repeal of the charter, could have that effect...is not the obligation of that grant impaired when the estate is taken from their exclusive management, and vested in them in common with ten other persons?
And, at 712: " These questions carry their own answers along with them, The common sense of mankind will teach us, that all these cases would be direct infringements of the legal obligations of the grants to which they refer...In my judgment it is perfectly clear t at any act of a legislature which takes away any powers or franchises vested by its charter...or which restrains or controls the legitimate exercise of them, or transfers them to other persons,

without its assent, is a violation of the obligations of that charter."

Note 9 People v Jackson Plank Road, 9 Mich. 307: " The limit to the exercise of the police power in these cases must be this: the regulations must have reference to the comfort, safety, or welfare of society; they must not be in conflict with any of the provisions of the charter; and they must not, under pretence of regulation, take form the corporation any of the essential rights and privileges which the charter confers. In short, they must be police regulations in fact, and not amendments of the charter in curtailment of the corporate franchise. The maxim, *Sic utere tuo ut alienum non laedas,* is that which lies at the foundation of the power; and to whatever enactment affecting the management and business of private corporations it cannot fairly be applied, the power itself will not extend."

Note 10 Dartmouth at 675: " Unless a power be reserved for this purpose, the crown cannot compel the corporation to receive a new charter. This is the uniform language of the authorities, and forms one of the most stubborn and well-settled doctrines of the common law."

And, at 707-708: " Nothing seems better settled at the common law, than the doctrine, that the crown cannot force upon a private corporation a new charter; or compel the old members to give up their own franchises, or to admit new members into the corporation. Neither can the crown compel a man to become a member of such corporation against his will. As little has it been supposed, under our limited governments, the legislature possessed such transcendant authority."

Note 11 Dartmouth at 698: " The only authority remaining to the government is judicial, to ascertain the validity of the grant, to enforce its proper uses, to suppress frauds..."

Note 12 Dartmouth at 699: " The truth , however, is, that all incorporeal hereditaments, whether they be immunities,

dignities, offices, or franchises, or other rights, are deemed valuable in law. The owners have a legal estate and property in them, and legal remedies to support and recover them. Whenever they are the subjects of a contract or grant, they are just as much within the reach of the constitution as any other grant."
Note 13 Grammar School v Bailey, at 475: "This is as absolute a grant of the lands as is that of the Legislature to the proprietors.",
And, Grammar School v Burt, at 640: "This grant... was as unconditional and as absolute and of the same effect, as a grant to a man and his heirs and assigns forever.", and, at 641, "All the lands in Vermont, granted by charters from its Governor, under the authority of the legislature, are held by the same tenure, and not greater, nor more inviolable than that by which the plaintiffs hold theirs; and it cannot be considered that our citizens hold their farms at the mere will and pleasure of the legislature.",
And, Herrick, at a530, " We think such an exemption, if it exist, [i.e., the terms of the grant], should receive a liberal interpretation, and such an enlarged extension as to carry into full effect the object of the grantors, and so as not to defeat, or abridge, the reasonable expectations of the grantees."
Note 14:Bedroc v U.S., at 7, "...Congress was dealing with a practical subject in a practical way and that it intended the terms of the reservation to be understood in their ordinary and popular sense", and, "land-grant statutes should be interpreted in light of the condition of the country when the acts were passed",
And, at 10, "...our longstanding precedents (that) permit resort to legislative history only when necessary to interpret ambiguous statutory text. Chief Justice Marshall in 1805 stated the principle that definitively resolves this case nearly 200 years later: 'Where a law is plain and

unambiguous, whether it be expressed in general or limited terms, the legislature should be intended to mean what they have plainly expressed, and consequently no room is left for construction."

Note 15: Dartmouth at 683: " But it must, on the other hand, be also admitted, that the constitution did intend to preserve all the obligatory force of contracts, which they have by the general principles of law."

Note 16: Dartmouth at 631: " It becomes then the duty of the Court most seriously to examine this charter, and to ascertain its true character.",

And, at 625: " On the judges of this Court, this, is imposed the high and solemn duty of protecting, from even legislative violation, those contracts which the constitution of our country has placed beyond legislative control; and, however irksome the task may be, this is a duty from which we dare not shrink."

Note 17: Dartmouth at 581-582: " Everything which may pass under the form of an enactment, is not, therefore, to be considered the law of the land. If this were so, acts of attainder, bills of pains and penalties, acts of confiscation, acts reversing judgments, and acts directly transferring one man's estate to another, legislative judgments, decrees, and forfeitures, in all possible forms, would be the law of the land. Such a strange construction would render constitutional provisions of the highest importance completely inoperative and void. It would tend directly to establish the union of all powers in the legislature. There would be no general permanent law for courts to administer, or for men to live under. The administration of justice would be an empty form, an idle ceremony. Judges would sit to execute legislative judgments and decrees; not to declare the law, or to administer the justice of the country."

Note 18: Dartmouth at 561: " In the opinion, however, which was given in the

Court below, it is denied that the trustees, under the charter, had any property, immunity, liberty or privilege, in this corporation, within the meaning of this prohibition in the bill of rights. "

And, at 569-570: " They had, therefore, as they contend, *privileges, property*, and *immunities*, within the true meaning of the bill of rights. They had rights, and still have them, which they can assert against the legislature, as well as against other wrongdoers, It makes no difference, that the estate is holden for certain trusts. The legal estate is still theirs. They have a right in the property, and they have a right of visiting and superintending the trust; and this is an object of legal protection, as much as any other right. The charter declares, the powers conferred on the trustees, are' privileges, advantages, liberties, and immunities;' and that they shall be forever holden by them and their successors. The New-Hampshire bill of rights declares, that no one shall be deprived of his ' property, privileges, or immunities,' but by judgment of his peers, or the law of the land. The argument on the other side is, that although these terms may mean something in the bill of rights, they mean nothing in this charter. But they are terms of legal signification, and very properly used in the charter. They are equivalent with *franchises*. Blackstone says that *franchise* and *liberty* are used as synonymous terms. And after enumerating other *liberties* and *franchises*, he says. ' it is likewise a franchise for a number of persons to be incorporated and subsist as a body politic, with a power to maintain perpetual succession, and do other corporate acts; *and each individual member of such corporation is also said to have a franchise or freedom' 2 Bl. Com. 37. Liberties* is the term used in *magna charta*, as including franchises, privileges, immunities, and all the rights which

belong to that class. Professor Sullivan says, the term signifies the '*privileges* that some of the subjects, whether single persons or bodies corporate, have above others by the lawful grant of the king; as the chattels of felons or outlaws, and the lands and *privileges of corporations*', *Sull. 41st Lec.*

Note 19: Treaty of Peace of 1763, Art. 5, in relevant part: That persons of any other description shall have free liberty...unmolested in their endeavors to obtain the restitution of such of their estates, rights and properties, as may have been confiscated; and that

Congress shall also earnestly recommend to the several states a reconsideration and revision of all laws or acts perfectly consistent...with justice and equity...and shall...recommend...that the estates, rights and properties of such last mentioned persons, shall be restored to them...refunding...the bona fide price...paid...since the confiscation..."

Definitive Treaty of Peace Between the United States of America and his Britannic Majesty

In the name of the Most Holy and Undivided Trinity.

IT having pleased the Divine Providence to dispose the hearts of the most serene and most potent Prince GEORGE the Third, by the Grace of God King of Great-Britain, France and Ireland, Defender of the Faith, Duke of Brunswick and Lunebourg, Arch-Treasurer and Prince Elector of the Holy Roman Empire, &c. and of the UNITED STATES OF AMERICA, to forget all past misunderstanding and differences that have unhappily interrupted the good correspondence and friendship which they mutually wish to restore; and to establish such a beneficial and satisfactory intercourse between the two countries, upon the ground of reciprocal advantages and mutual convenience, as may promote and secure to both perpetual peace and harmony: And having for this desirable end, already laid the foundation of peace and reconciliation, by the provisional articles, signed at Paris, on the thirtieth of November, one thousand seven hundred and eighty-two, by the commissioners empowered on each part, which articles were agreed to be inserted in, and to constitute the treaty of peace proposed to be concluded between the crown of Great-Britain and the said United States, but which treaty was not to be concluded until terms of peace should be agreed upon between Great-Britain and France, and his Britannic Majesty and the United States of America, in order to carry into full effect the provisional articles abovementioned, according to the tenor thereof, have constituted and appointed, that is to say, His Britannic Majesty on his part, David Hartley, Esquire, Member of the Parliament of Great-Britain; and the said United States on

their part, John Adams, Esquire, late a Commissioner of the United States of America at the Court of Versailles, late Delegate in Congress from the state of Massachusetts, and Chief Justice of the said state, and Minister Plenipotentiary of the said United States to their High Mightinesses the States General of the United Netherlands; Benjamin Franklin, Esquire, late Delegate in Congress from the state of Pennsylvania, President of the Convention of the said state, and Minister Plenipotentiary from the United States of America at the Court of Versailles; John Jay, Esquire, late President of Congress, and Chief Justice of the state of New-York, and Minister Plenipotentiary from the said United States at the Court of Madrid, to be the Plenipotentiary from the said United States at the Court of Madrid, to be the Plenipotentiaries for the concluding and signing the present definitive treaty; who after having reciprocally communicated their respective full powers, have agreed upon and confirmed the following articles.

ARTICLE I.

His Britannic Majesty acknowledges the said United States, viz. New-Hampshire, Massachusetts-Bay, Rhode-Island and Providence Plantations, Connecticut, New-York, New-Jersey, Pennsylvania, Delaware, Maryland, Virginia, North-Carolina, South-Carolina, and Georgia, to be free, sovereign and independent States; that he treats with them as such; and for himself, his heirs and successors, relinquishes all claims to the government, propriety and territorial rights of the same, and every part thereof.

ARTICLE II.

And that all disputes which might arise in future, on the subject of boundaries of the said United States, may be prevented, it is hereby agreed and declared, that the

following are, and shall be their boundaries, viz. From the north-west angle of Nova-Scotia, viz. that angle which is formed by a line, drawn due north from the source of St. Croix river to the Highlands; along the said Highlands which divide those rivers, that empty themselves into the river St. Lawrence, from those which fall into the Atlantic ocean, to the northwesternmost head of Connecticut river, thence down along the middle of that river, to the forty-fifth degree of north latitude; from thence, by a line due west on said latitude, until it strikes the river Iroquois of Cataraquy; thence along the middle of said river into lake Ontario, through the middle of said lake until it strikes the communication by water between that lake and lake Erie; thence along the middle of said communication into lake Erie, through the middle of said lake until it arrives at the water-communication between that lake and lake Huron; thence along the middle of said water-communication into the lake Huron; thence through the middle of said lake to the water-communication between that lake and lake Superior; thence through lake Superior northward of the isles Royal and Phelipeaux, to the Long Lake; thence through the middle of said Long Lake, and the water-communication between it and the Lake of the Woods, to the said Lake of the Woods; thence through the said lake to the most north-western point thereof, and from thence on a due west course to the river Mississippi; thence by a line to be drawn along the middle of the said river Mississippi until it shall intersect the northernmost part of the thirty-first degree of north latitude. South by a line to be drawn due east from the determination of the line last mentioned, in the latitude of thirty-one degrees north of the Equator, to the middle of the river Apalachicola of Catahouche; thence along the middle thereof to its junction with the Flint river; thence strait to the head of St. Mary's river; and thence down along the middle of St. Mary's river to the Atlantic

ocean. East by a line to be drawn along the middle of the river St. Croix, from its mouth in the Bay of Fundy to its source, and from its source directly north to the aforesaid Highlands which divide the rivers that fall into the Atlantic ocean, from those which fall into the river St. Lawrence; comprehending all islands within twenty leagues of any part of the shores of the United States, and lying between lines to be drawn due east from the points where the aforesaid boundaries between Nova-Scotia on the one part, and East-Florida on the other, shall respectively touch the Bay of Fundy and the Atlantic ocean; excepting such islands as now are, or heretofore have been within the limits of the said province of Nova-Scotia.

ARTICLE III.

It is agreed that the people of the United States shall continue to enjoy unmolested the right to take fish of every kind of the Grand Bank, and on all the other banks of Newfoundland; also in the gulph of St. Lawrence, and at all other places in the sea, where the inhabitants of both countries used at any time heretofore to fish; and also that the inhabitants of the United States shall have liberty to take fish of every kind on such part of the coast of Newfoundland as British fisherman shall use (but not to dry or cure the same on that island); and also on the coasts, bays and creeks of all other of his Britannic Majesty's dominions in America; and that the American fisherman shall have liberty to dry and cure fish in any of the unsettled bays, harbours and creeks of Nova-Scotia, Magdalen islands, and Labrador, so long as the same shall remain unsettled;; but so soon as the same or either of them shall be settled, it shall not be lawful for the said fisherman to dry or cure fish at such settlement, without a previous

agreement for that purpose with the inhabitants, proprietors or possessors of the ground.

ARTICLE IV.

It is agreed that creditors on either side, shall meet with no lawful impediment to the recovery of the full value in sterling money, of all bona fide debts heretofore contracted.

ARTICLE V.

It is agreed that the Congress shall earnestly recommend it to the legislatures of the respective states, to provide for the restitution of all estates, rights and properties, which have been confiscated, belonging to real British subjects, and also of the states, rights and properties of persons resident in districts in the possession of his Majesty's arms, and who have not borne arms against the same United States. And that persons of any other description shall have free liberty to go to any part of parts of any of the thirteen United States, and therein to remain twelve months, unmolested in their endeavours to obtain the restitution of such of their estates, rights and properties, as may have been confiscated; and that Congress shall also earnestly recommend to the several states a reconsideration and revision of all acts or laws regarding the premises, so as to render the said laws or acts perfectly consistent, not only with justice and equity, but with that spirit of conciliation, which on the return of the blessings of peace should universally prevail. And that Congress shall also earnestly recommend to the several states, that the estates, rights and properties of such last mentioned persons, shall be restored to them, they refunding to any persons who may be now in possession, the bona fide price (where any has been given) which such persons may have paid on purchasing any of

the said lands, rights or properties, since the confiscation. And it is agreed, that all persons who have any interest in confiscated lands, either by debts, marriage settlements, or otherwise, shall meet with no lawful impediment in the prosecution of their just rights.

ARTICLE VI.

That there shall be no future confiscations made, nor any prosecutions commenced against any person or persons for, or by reason of the part which he or they may have taken in the present way; and that no person shall, on that account, suffer any future loss or damage, either in his person, liberty or property; and that those who may be in confinement on such charges, at any time of the ratification of the treaty in America, shall be immediately set at liberty, and the prosecutions so commenced be discontinued.

ARTICLE VII.

There shall be a firm and perpetual peace between his Britannic Majesty and the said States, and between the subjects of the one and the citizens of the other, wherefore all hostilities, both by sea and land, shall from henceforth cease: all prisoners on both sides shall be set at liberty, and his Britannic Majesty shall, with all convenient speed, and without causing any destruction, or carrying away any negroes or other property of the American inhabitants, withdraw all his armies, garrisons and fleets from the said United States, and from every post, place and harbour within the same; leaving in all fortifications the American artillery that may be therein; and shall also order and cause all archives, records, deeds and papers, belonging to any of the said states, or their citizens, which in the course of the way may have fallen into the hands of his officers, to be

forthwith restored and delivered to the proper states and persons to whom they belong.

ARTICLE VIII.

The navigation of the river Mississippi, from its source to the ocean, shall for ever remain free and open to the subjects of Great-Britain, and the citizens of the United States.

ARTICLE IX.

In case it should so happen that any place of territory belonging to Great-Britain or to the United States, should have been conquered by the arms of either from the other, before the arrival of the said provisional articles in America, it is agreed, that the same shall be restored without difficulty, and without requiring any compensation.

ARTICLE X.

The solemn ratifications of the present treaty, expedited in good and due form, shall be exchanged between the contracting parties, in the space of six months, or sooner if possible, to be computed from the day of the signature of the present treaty. In witness whereof, we the undersigned, their Ministers Plenipotentiary, have in their name and in virtue of our full powers, signed with our hands the present definitive treaty, and caused the seals of our arms to be affixed thereto.

Done at Paris, this third day of September, in the year of our Lord one thousand seven hundred and eighty-three.

D. HARTLEY,

(L. S.)

JOHN ADAMS,

(L. S.)

B. FRANKLIN,

(L. S.)

JOHN JAY,

(L. S.)
8 Stat 80, 1783 WL 47 (U.S. Treaty)